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SUPREME COURT OF THE UNITED STATES

_____ TERM, 1945

No. 1065

OIL WORKERS INTERNATIONAL UNION,
LOCAL 463, et al.,
Petitioner and
Appellant below,

vs.

TEXOMA NATURAL GAS COMPANY,
Respondent and
Appellee below

PETITION FOR WRIT OF CERTIORARI
and
PETITIONER'S SUPPORTING BRIEF

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OIL WORKERS INTERNATIONAL UNION, LOCAL 463, et al.,
Petitioner and
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vs.

TEXOMA NATURAL GAS COMPANY,
Respondent and
Appellee below

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

To the Honorable Harlan F. Stone, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

Summary Statement of Matter Involved

This is a suit brought in the United States District Court for the Northern District of Texas by the Texoma Natural Gas Company, respondent herein, against

petitioner herein, for a declaratory judgment as to respondent's rights and obligations growing out of an arbitration and award directed by the National War Labor Board (Tr., Page 1). The trial was by the Court and a judgment was rendered in favor of respondent and against petitioner setting aside said award (Tr., Page 110). An appeal from said judgment was taken by petitioner to the United States Circuit Court of Appeals, Fifth Circuit, which affirmed the judgment of the District Court (Page 346 of Tr.).

Statement of Facts

The Oil Workers International Union, Local No. 463, petitioner, is a labor organization and as such entered into a collective bargaining agreement with the Texoma Natural Gas Company, respondent, on August 27, 1942, effective September 1, 1942, covering certain employees of the Company's Compressor Station and Gasoline Plant located at Fritch, Texas (Tr., Page 114).

The controversy between the parties arose when, on October 16, 1942, the respondent returned one of its employees from a supervisory position to the position of main engineer in its engine room, which latter position is subject to the seniority provisions set forth in Article III of the collective bargaining contract (Tr., Page 115). The petitioner contended that the respondent had no right under the contract to permit the employee to fill the job of main engineer, because he was not next in line to fill the same by virtue of

the seniority provisions. The respondent contended that its action was fully justified under the contract.

A further controversy arose when, on and before October 25, 1942, the respondent extended its normal work week from 40 hours to 48 hours. Petitioner contended that the length of the work week is a subject of negotiation between the parties, and the respondent contended that the question is solely a function of management.

On November 20, 1942, petitioner filed with respondent a written complaint regarding the above contentions on the two controversies and after certain correspondence between the parties, on December 3, 1942, informed the respondent that they desired to arbitrate the matters pursuant to Article 12 of the contract (Tr., page 123), to which the respondent declined and insisted that the matters were not arbitrable.

The entire matter was certified to the Eighth Regional War Labor Board and a hearing was held before a panel of said Board on the matter of the complaint on April 19, 1943. The respondent still contended before the Board that the controversies were not arbitrable and that the Board did not have jurisdiction.

On July 3, 1943, the Eighth Regional War Labor Board, acting as the duly authoried agent of the National War Labor Board, adopted the minority recommendations of the Panel Chairman and Public Chairman Wales H. Madden (Tr., Page 227) in that he recommended that the Board decline to accept juris-

diction over the dispute on a merit basis, but modified such minority recommendation in that the Board directed the parties to forthwith proceed with arbitration of the issues as provided for under the terms of the collective bargaining contract (Tr., Pages 240, 241).

Thereafter, over the objections of respondent as to the arbitrability of the two issues, the matters were submitted to a Board of Arbitrators composed of three members. On October 20, 1943, said arbitrators issued their majority award directing that the employee be removed from the job as main engineer and that the respondent negotiate with petitioner regarding the extention of the work week (Tr., Pages 30 to 36).

On October 27, 1943, the respondent filed its complaint in the United States District Court for the Northern District of Texas, seeking a declaratory judgment as to their rights and obligations, pursuant to the award of the arbitrators (Tr., Page 1).

On October 28, 1943, Petitioner filed its petition for enforcement of the award with the Eighth Regional War Labor Board (Tr., Page 164), and on November 12, 1943, filed their petition for a strike vote with the National Labor Relations Board, pursuant to the procedure of the War Labor Disputes Act (commonly called Smith-Connally Act) (Tr., Page 196).

In response to respondent's complaint, petitioner moved for dismissal for the several reasons set forth hereinafter under "Reasons Relied on for The Allowance of The Writ."

II.

Jurisdiction to Review Judgment

The decision of said Circuit Court of Appeals was rendered December 1, 1944; and the order denying petitioner's Petition for Rehearing was entered January 3, 1945 (Page 350 of Tr.). Mandate was issued January 23, 1945. The statutory provision which sustains the jurisdiction of this Court is Section 347 (a) of Title 28 of the United States Code. Pursuant to Section 350 of Title 28 of the United States Code, petitioner may bring this application within 3 months after denial of said Petition for Rehearing by said Circuit Court of Appeals. *(Aspen Mining & Smelting Co. vs. Billings,* 150 U. S. 31).

III.

Questions Presented

The questions presented on appeal to said Circuit Court of Appeals, which were adversely decided as to petitioner, and here presented for this Court's determination are:

1. Does an arbitration and award directed by the National War Labor Board, pursuant to the War Labor Disputes Act (57 Statute 163, ch. 144, June 25, 1943, Appendix "A"), constitute or create a "justiciable controversy" or "actual controversy," in the absence of and independent of other contentions and positions of the parties, sufficient to vest jurisdiction of the Federal Courts under the Declaratory Judgment Act, Section 400, Title 28 of the United States Code? (Tr., Page 241). (See Appendix "C").

2. May the Courts review or declare the rights and obligations of the parties resulting from arbitration awards directed by the National War Labor Board, before such parties have exhausted their administrative remedy of review before such Board, pursuant to its rules, regulations and policies, (Tr., Page 255) and especially while such issues are concurrently pending before said Board for "adjudication, settlement, and final determination" as prescribed by the War Labor Disputes Act (Tr., Page 164). (See Appendix "A").

3. Should a declaratory judgment be denied where another remedy will be more effective under the circumstances?

4. Does due notice of a desire to "amend" a collective bargaining contract, given pursuant to a contractual right to terminate such agreement upon the annual renewal date, constitute a termination of the agreement? (Tr., Pages 114, 127 to 129).

IV.

Reasons Relied on for the Allowance of the Writ

A.

The decision of said Circuit Court of Appeals, by holding that an arbitration award directed by the National War Labor Board creates a justiciable controversy between the parties, is in conflict with the decisions of the United States Court of Appeals for the District of Columbia, in the case of *Employers Group of Motor Freight Carriers, Inc., et al, vs. National War Labor Board*, 143 Fed. 2nd. 145, certiorari denied 65 S. Ct. 72, and in the case of *National War Labor Board*

et al. vs. Montgomery Ward & Company, 144 Fed. 2nd. 528, certiorari denied — U. S. —, Nov. 13, 1944.

B.

The decision of said Circuit Court of Appeals, holding that the Courts have jurisdiction, by declaration to review or determine issues growing out of National War Labor Board directives, even while such issues are pending before such Board, is in conflict with decisions of the same Circuit Court of Appeals in the same cases cited in "A" above.

C.

The decision of said Circuit Court of Appeals by holding that the Courts may take jurisdiction over the labor dispute while the dispute is pending before the National War Labor Board, by declaration, and before the parties exhaust their adminitsrative remedy of review before said Board, is in conflict with the decisions of the Circuit Court of Appeals for the Fourth Circuit, on the same matter, in *Aetna Casualty Company vs. Quarles*, 92 Fed. 2nd 321, and with the decision of the United States Court of Appeals for the District of Columbia in the case of *Washington Terminal Company vs. Boswell*, 124 Fed. 2nd 235, certiorari denied 62 S. Ct. 916, and with the decision of the United States Court of Appeals for the District of Columbia in the case of *Utah Fuel Company vs. Bituminous Coal Commission*, 101 Fed. 2nd 426 and 59 S. Ct. 253.

D.

The decision of the said Circuit Court of Appeals as to the effective and valid continuation of the collective bargaining contract between the parties, after due notice by petitioner of its desire to terminate ("amend") said contract pursuant to its option, by holding that said contract is still in full force and effect, is in conflict with the numerous decisions of the National Labor Relations Board relating to questions concerning representation pursuant to the National Labor Relations Act, and involves an important question of Federal and local law which has not been, but should be, settled by this Court.

E.

The great importance of the War Labor Disputes Act (commonly called "Smith-Connally Act") (see Appendix "A"); the importance of a speedy and effective administrative process in settling labor disputes; and the importance of stable collective bargaining contracts, especially during the present National War Emergency, involved in the present business and economic world and legal profession, and the need of an authoritative and elucidating decision thereon, calls for an exercise of this Court's power of supervision.

III.

Transcript of Record

Your petitioner presents to this Court, and files herewith as an exhibit hereto, a duly certified transcript of the entire record in the case, as the same appears in the United States Circuit Court of Appeals.

WHEREFORE, your petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals, for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Circuit Court of Appeals had in the case numbered and entitled on its docket, No. 10971, Oil Workers International Union, Local No. 463, et al, Appellants, vs. Texoma Natural Gas Company, Appellee, to the end that this case may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the judgment herein of said Circuit Court of Appeals be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated February 28, 1945.

Lindsay P. Walden
Counsel for Petitioner

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